

[2020]GCA090

IN THE COURT OF APPEAL OF GUERNSEY

CIVIL DIVISION – APPEAL NO. 537

Before: Richard James McMahon, Esq., President

IN THE MATTER OF THE K TRUST

**APPLICATION FOR PRIVACY ORDER
(determined on the papers)**

Date of Decision: 30 June 2020

Counsel for the Applicant:	Advocate M C Newman
Counsel for the “A” Beneficiary:	Advocate J T Le Tissier
Counsel for the “B” Beneficiary:	Advocate A M Davidson
For the Unborn and Unascertained Beneficiaries:	Advocate M D P Jones

Cases and materials referred to:

In the Matter of the K Trust [2019] GRC 065

IFS Investments Limited v Manor Park (Guernsey) Limited [2003-04] GLR 77

Alpha Development Limited v Barclays Wealth Trustees (Guernsey) Limited (unreported, 4 March 2015)

T Limited (unreported, 25 July 2016)

Jersey Evening Post Limited v Al Thani 2002 JLR 542

1. By an Application dated 25 June 2020, the Trustee of the Trust referred to as the K Trust for the purposes of these proceedings, seeks a full privacy order in respect of the appeal currently before the Court of Appeal. That Application is supported by the Third Affidavit of a director of the Trustee sworn on 25 June 2020. The Court also has a Skeleton Argument prepared by Advocate Newman on behalf of the Trustee Applicant. From the director’s evidence, it is apparent that the other parties to the appeal have been consulted prior to the Application being made. In those circumstances, as a single judge, and as invited to do so by Advocate Newman, I am able to determine the Application on the papers.
2. The appeal is brought by Beneficiary A against the whole of the decision of the Royal Court on the grounds set out in Beneficiary A’s Notice of Appeal dated 18 December 2019. The Royal Court’s judgment was delivered by the then Bailiff, Sir Richard Collas, on 18 November 2019 ([2019] GRC 065). That judgment has been anonymised. Bailiff Collas had made an order on 12 March 2019 that the proceedings, which involve the construction of a trust instrument, be heard in private and the court file sealed. The current Application seeks to preserve those levels of confidentiality in respect of the appeal from that judgment.

3. The director's Third Affidavit elaborates upon some of the facts appearing in the anonymised judgment. That Affidavit also refers to a previous judgment of the Royal Court (again involving Bailiff Collas) dating from 2014 and relating to another trust in which the family who are beneficiaries of the K Trust were also involved. He expresses the concern that, if the Application for a privacy order were refused, any observer of these proceedings, including one reading any judgment handed down in due course, would be able to join the dots across all these materials and so be able to identify the parties and other details.
4. The director's Affidavit also exhibits the recent correspondence passing between the parties' Advocates. On behalf of Beneficiary B, Advocate Davidson supports the Application. Advocate Martin Jones, appointed to represent the interests of the minor and unborn and unascertained beneficiaries, also agrees that a privacy order should be sought. On behalf of Beneficiary A, Advocate Jeremy Le Tissier has questioned whether a privacy application could be granted, or continued, and points out that Beneficiary B has now attained the age of majority, but acknowledges that, if such an application were to be made, Beneficiary A does not oppose it, albeit that any applicant would need to proceed at their own risk so far as the incidence of costs is concerned. Advocate Le Tissier has also written that if the Trustee were to make a privacy application at a cost to the Trust, Beneficiary A would prefer that it were granted.
5. In Advocate Newman's Skeleton Argument, he acknowledges that the default position is that proceedings are heard in open court. That general principle is found in Practice Direction No. 2 of 2000 and has been expressed in a number of cases, one example of which frequently cited is the decision of the Royal Court in *IFS Investments Limited v Manor Park (Guernsey) Limited* [2003-04] GLR 77. He has drawn attention to the test of strict necessity described in *Alpha Development Limited v Barclays Wealth Trustees (Guernsey) Limited* (unreported, 4 March 2015) and the guidance that can be found by reference to rule 39.2 of the English Civil Procedure Rules, which includes where the case involves confidential information and publicity would damage that confidentiality and where the case involves uncontentious matters arising in the administration of trusts, where a departure from the usual rule of holding the hearing in public is permissible. Within the specific context of cases invoking the supervisory jurisdiction of the Court in a trusts case, he refers to *T Limited* (unreported, 25 July 2016), where the approach of sitting in private was confirmed as being a well-established exception to the principle of open justice.
6. I am satisfied that it is appropriate to grant the privacy order sought by the Trustee in respect of these appeal proceedings. The majority of administrative trust applications can properly be held in private. There is a well-established distinction between contentious and non-contentious trusts matters (see, eg, *Jersey Evening Post Limited v Al Thani* 2002 JLR 542). Judgments can usually be prepared in such a way that details that would otherwise lead to identification of the parties or relate to matters that should normally be kept private can be redacted or couched in anonymous language. In this manner, the decision of the Court and the reasons for reaching it can be handed down in public, reflective of the degree of open justice to be afforded to the issues being determined. That approach is consistent with the form of order sought.
7. Although one of the parties has now attained the age of majority, which I imagine was a further factor leading to the privacy order made by the Royal Court, the evidence, in my opinion, points towards the likelihood of the parties' Advocates needing to refer during the course of the hearing to family circumstances that would otherwise remain private and confidential. Publicity would be damaging to those concerned. It would defeat the terms of the privacy order made in the Royal Court if this Court were to conclude that the appellate hearing must be conducted in public, unless there were a material change of circumstances. I am not persuaded that one beneficiary attaining the age of majority constitutes such a material change of circumstances, where the other reasons for having made a privacy order continue.
8. In those circumstances, this Court will order that all aspects of the appellate proceedings be heard in private and the Court file sealed. However, the Court file should be marked "*not to be opened*".

save by a judge of the Court of Appeal” rather than referring to a judge of the Royal Court as found in para. 4 of the Application. Continuing the style used in the Royal Court of referring to the matter as the K Trust makes sense, enabling any reader to understand the link to the judgment that is the subject of this appeal. Accordingly, any written judgment handed down in public or Act of Court will be appropriately redacted and/or anonymised so as to avoid identification as sought by para. 6. The confidentiality ring regarding the materials relating to the appeal requires that any person wishing to disclose any materials to third parties must only do so with leave of the Court.

9. Paragraph 7 of the Application seeks an order that the reasonable costs of the parties to this Application be costs in the Appeal. In circumstances where I have determined the Application on the papers, I consider that the better outcome for now is to reserve the costs, which is the order I make.